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ON PETITION

In re Application of
Donald Edgar Blahut et al.
Application No. 00/477,880
Filed: January 5, 2000
Attorney Docket Number: 129250-002093/US

This is a decision on the petition filed September 24, 2010, under 37 CFR 1.181, to withdraw the holding of abandonment and in the alternative, under 37 CFR 1.137(b)¹, to revive the above identified application.

The petition under 37 CFR 1.181 is **DISMISSED**.
The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application became abandoned as a result of petitioner's failure to file a proper appeal brief within the time period provided. A Notice of Appeal was filed June 30, 2006. On August 30, 2006 an appeal brief was filed. On September 15, 2006, however, a Notification of Non-Compliant Appeal Brief (37 CFR 41.37) was mailed. A replacement appeal brief was filed October 16, 2006 and a Notification of Non-Compliant Appeal Brief (37 CFR 41.37) was again mailed on January 3, 2007. A second replacement appeal brief was filed February 5, 2007 and a Notification of Non-Compliant Appeal Brief (37 CFR 41.37) was again mailed on August 1, 2007. After the filing of yet another replacement appeal brief on September 4, 2007, a Notice of Abandonment and Communication Re: Appeal was mailed October 9, 2007 advising that the Appeal is Dismissed because "The brief does not contain a concise explanation of the subject matter defined in each independent claim involved in the

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

appeal, referring to the specification by page and line number for each element in the claims." Thus, "Because of the dismissal of the appeal, this application is abandoned because there are no allowed claims."

Petitioner argues that the statements indicated in the Communication mailed October 9, 2007 are incorrect, that "the process used in reviewing appellate briefs during 2007 was inconsistent, arbitrary, and confusing" and that "Believing that the Patent Appeal Center had made a clerical error, and had not received or reviewed the correct set of claims, the Applicants' Attorney began to prepare a petition to withdraw the Notice of Abandonment."

Petitioner's arguments have been considered but are not thought to be persuasive. The Notice of Defective Appeal Brief mailed August 1, 2007 set a one-month period for reply that was extendable under 37 CFR 1.136. Applicant had until September 4, 2007 in which to file the corrected brief. Applicant filed what they thought was a "corrected" appeal brief on September 4, 2007. The examiner of record however disagreed. Since the appeal was dismissed with no claims allowable, the case was properly abandoned. See also MPEP 1215.04. See also 37 CFR 41.37 (d) which states: (d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

Petitioner has submitted a Request for Continued Examination (RCE) and an amendment as the submission required under 37 CFR 1.114.

With respect to the petition to revive, the petition fee in the amount of \$1620.00 has been charged to deposit account no. 50-3777.

All other requirements under 37 CFR 1.137(b) having been met, this matter is being referred to Technology Center 2154 for processing of the RCE.

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.



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Office of Petitions